



# State Bar of Michigan

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January 13, 2003

RECEIVED

JAN 13 2003

OFFICE OF  
THE CHIEF JUSTICE

Corbin R. Davis  
Office of the Clerk  
Supreme Court of Michigan  
P.O. Box 30052  
Lansing, MI 48909-7552

Re: Comments on Proposed Electronic Filing Standards  
Michigan Supreme Court Order 2002-37

Dear Mr. Davis,

I am writing on behalf of the State Bar of Michigan's Electronic Filing Task Force which is comprised of attorneys and judges in Michigan who are on the forefront of legal technology (please see committee roster attached).

Enclosed are the group's comments regarding the proposed electronic filing standards currently being considered by the Court. It is our understanding that the deadline for the submission of these comments has been extended until January 16, 2003.

The Honorable Donald Shelton will be representing the views of the Task Force in person at the Public Hearing scheduled for January 16. Your office has added Judge Shelton to the agenda.

Thank you for the opportunity to participate in this process. Please feel free to contact me if you have any questions or require anything further.

Best Regards,

James Erhart  
Chair, Electronic Filing Task Force  
(231-347-3907)  
erhart@freeway.net



cc: State Bar of Michigan Public Policy Committee, Janet Welch (liaison)  
State Bar of Michigan Electronic Filing Task Force Members





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TO: Supreme Court of Michigan

FROM: State Bar of Michigan Electronic Filing Task Force

RE: Comments on Proposed Electronic Filing Standards  
Michigan Supreme Court Order 2002-37

DATE: January 9, 2003

Thank you for allowing the Electronic Filing Task Force the opportunity to comment on the proposed Standards for Electronic Filing Processes. Our committee met on December 12, 2002 to discuss the standards and the attached represents our views on Michigan Supreme Court Order 2002-37.

The Electronic Filing Task Force was established in 2000 to encourage and support electronic filing systems and programs in Michigan. The committee is comprised of volunteer attorneys, court personnel, representatives from the State Court Administrative office and judges in Michigan who support and lead electronic filing initiatives both at the federal and state level. The committee has taken a leadership role in supporting electronic filing initiatives, first establishing an electronic filing partnership with Washtenaw County in 2001.

The goals of the Task Force are to monitor, coordinate and encourage electronic filing initiatives in Michigan and to assist in the development of recommendations for electronic filing standards; and to review and make recommendations to the State Bar Membership Services Committee regarding secure document delivery services.

The Bar, the public, and the courts clearly have an interest in making sure legal documents are kept confidential. State Bar members need to be assured that legal documents filed at the court are confidential and are filed from attorneys in good standing. Equally important is the attorney's right to confidentiality when corresponding electronically with his/her clients and with other attorneys.

The Electronic Filing Task Force believes electronic filing is the future of the legal profession and it supports the advocacy and implementation of an accessible, secure, cost-effective electronic filing system for Michigan. The Committee supports the Proposed Electronic Filing Standards as recommended with the following comments for the Court's consideration:



## SECTION 1 - POLICY STANDARDS

### ▪ 1.1D Standard Document Format

The standards indicate that PDF, a proprietary product of the Adobe company, is the "defacto standard for electronic filing today". The committee recommends the language be removed as to not support any proprietary and private product.

The committee also supports PDF applications as a choice for many courts, but recommends the standards not impose any format on filers. Rather, systems should fully utilize XML also, as the standards suggest, to allow filing in various formats. Each individual court can convert the filed documents, if they wish, to their own internal format.

### ▪ 1.1E Self-Contained Documents

Although the committee understands the need to assure that the cited case law is accurate, the inability to attach hyper-links to relevant case law appears to impede an attorney's ability to submit a completely electronic pleading. As there are two types of hyper links – those which are connected to the Internet and those which are built into a document – the committee proposes the court differentiate between internal and external hyper links and allow links to internal documents.

### ▪ 1.1J Surcharges for Electronic Filing

The committee generally supports the State Bar's Access to Justice Task Force, the Access to Justice Work Group of the Open Justice Commission and the Standing Committee on Legal Aide's recommendation of waiver of fees for persons who are not able to pay them, but differed from the committees by not supporting **requiring** the waiver of fees. Therefore, the committee supports the standards language as written.

### ▪ 1.1K Court Control over Court Documents

This standard, regarding ownership and control of the court's records, is of the utmost importance to the courts/clerks. The committee strongly supports this language.

### ▪ 1.2D Availability of Electronic Filing Process

The committee issued the following comment on 1.2D: The standards states "if courts are not using an automated process for docket update without clerk review, filing can only occur when court staff are working." This would substantially reduce an attorney or litigant's ability to file on a 24/7 basis and substantially reduce the potential benefits of electronic filing.

- **1.3F Eliminating Unnecessary Paper Processes**

The committee strongly supports the language of 1.3F and cannot emphasize enough the need for “strong judicial and administrative leadership.”

- **1.3H Archiving Electronic Documents**

The committee issued the following comment on 1.3H: Maintaining outdated equipment in order to provide archived data in a readable format may prove to be very costly for courts/clerks.

## **SECTION 2 – CONCEPTUAL MODEL**

- **XML Standard 6 (Page 52)**

This standard, which calls for “incorporation of transcripts, full citation and research information and other value added elements into electronic case file processing” seems to contradict Policy Standard 1.1E 1.1E Self-Contained Documents, which prohibits the filing of a document containing links to documents or references not included in the pleading itself.

## **SECTION 3 – FUNCTIONAL STANDARDS**

- **3.7 Case and Document Confidentiality**

The standard states that “it does not endorse, anticipate or require redaction of individual data fields within documents” but rather suggests that the entire electronic document be made confidential. Without allowing the redaction of specific data fields (i.e., social security number, etc.) this provision would require a large number of pleadings to be made inaccessible. The committee recommends standards be applied only to specific data fields if the technology is feasible, rather than documents in their entirety.

- **3.8 Acceptance and Rejection of Filings**  
**Subfunction 3.8.4**

See notes on Standard 1.1E Self Contained Documents.